An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-352

No. COA21-636

Filed 17 May 2022

Burke County, 21 J.T. 61

IN THE MATTER OF:

J.A.W.

Appeal by respondent from order entered on 12 August 2021 by Judge Mark L. Killian in Burke County District Court. Heard in the Court of Appeals on 6 April 2022.

Speaks Law Firm, PC, by Garron T. Michael, for respondent.

No appellee brief filed.

DIETZ, Judge.

¶ 1 Respondent appeals an order terminating his parental rights on the ground that he willfully failed without justification to pay for his child's care, support, and education as required by a judicial decree or custody agreement between the parents. N.C. Gen Stat. § 7B-1111(a)(4). Because the trial court did not make sufficient findings concerning Respondent's willfulness or the existence of a judicial decree or custody agreement, we vacate the trial court's order and remand for further proceedings.

Facts and Procedural History

¶ 2 Jeremy[1] was born on 26 January 2018. After his birth, Jeremy resided with his father, Respondent, and his mother, Petitioner, in the home of his maternal grandmother. Petitioner and Respondent were married at the time of Jeremy's birth, and they have never formally divorced.

¶ 3 In September 2019, Respondent moved out of the home after a court entered a domestic violence protective order prohibiting him from having contact with Petitioner and Jeremy. Petitioner then moved to New York to live with family. He did not contest a renewal of the domestic violence protective order in 2020 and did not have any contact with Petitioner or Jeremy from late 2019 onward.

¶ 4 In May 2021, Petitioner petitioned to terminate Respondent's parental rights. Petitioner alleged Respondent willfully abandoned Jeremy pursuant to N.C. Gen. Stat. § 7B-1111(a)(7) and willfully failed without justification to pay for Jeremy's care, support, and education, as required by a decree or custody agreement pursuant to N.C. Gen. Stat. § 7B-1111(a)(4).

¶ 5 At the termination hearing, the only witnesses during the adjudicatory phase were Petitioner and Respondent. At the close of the evidence, the trial court announced that Petitioner had met her burden by clear, cogent, and convincing

---

[1] We use a pseudonym to protect the juvenile's identity.

evidence as to N.C. Gen. Stat. § 7B-1111(a)(4), willful failure to provide care, support, and education as required by a decree or custody agreement, but had failed to meet her burden as to N.C. Gen. Stat. § 7B-1111(a)(7), willful abandonment. The trial court then moved to the dispositional phase and ultimately found that terminating Respondent's parental rights was in Jeremy's best interests. The trial court later entered a written order terminating Respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(4). Respondent timely appealed.

Analysis

¶ 6 On appeal, Respondent argues that the trial court's findings are insufficient to support the court's conclusion that statutory grounds exist to terminate Respondent's parental rights under N.C. Gen. Stat. § 7B-1111(a)(4).

¶ 7 Section 7B-1111(a)(4) permits a trial court to terminate parental rights upon finding that a "parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition or motion *willfully* failed without justification to pay for the care, support, and education of the juvenile, *as required by the decree or custody agreement*." N.C. Gen. Stat. § 7B-1111(a)(4) (emphasis added).

¶ 8 We review the trial court's adjudication under N.C. Gen Stat. § 7B-1111(a)(4) to determine whether the findings are supported by clear, cogent, and convincing

evidence and whether those findings, in turn, support the trial court's conclusions of law. *Matter of J.S.*, 374 N.C. 811, 814, 845 S.E.2d 66, 70 (2020).

¶ 9 In its findings of fact, the trial court made an express finding concerning Respondent's failure to provide care, support, and education for the child. The court found that the "facts sufficient to terminate the parental rights" of Respondent under N.C. Gen Stat. § 7B-1111(a)(4) "are as follows: a. Respondent has failed to provide substantial support or consistent care with respect to the minor child and mother for greater than one (1) year preceding the filing of the Petition." This finding did not reference the existence of a judicial decree or custody agreement between the parents and did not reference the willfulness of Respondent's conduct. Similarly, there are no other findings addressing the existence of a judicial decree or custody agreement or the willfulness of Respondent's conduct.

¶ 10 To be sure, in the trial court's conclusions of law, the trial court concluded that Respondent "has willfully failed to support his minor child . . . for a period of more than one (1) year next preceding the institution of this action." This conclusion of law contains an express reference to the willfulness of Respondent's conduct. The "willfulness of a parent's conduct is a question of fact to be determined by the trial court from the evidence and is not a conclusion of law." *In re S.C.L.R.*, 378 N.C. 484, 2021-NCSC-101, ¶ 19. But a conclusion of law that purports to find willfulness should be treated as a corresponding finding of fact. *Id.*

¶ 11 Still, even if we were to treat this conclusion of law as a finding of fact, it conflicts with a nearly identical express finding of fact that omitted the willfulness language. More importantly, this conclusion of law also fails to find the existence of a judicial decree or custody agreement between the parents.

¶ 12 We therefore hold that the trial court's findings of fact are insufficient to support its determination that statutory grounds existed to terminate Respondent's parental rights under N.C. Gen Stat. § 7B-1111(a)(4). *In re C.L.H.*, 376 N.C. 614, 2021-NCSC-1, ¶ 14. We vacate the trial court's order and remand for further proceedings. On remand, the trial court may enter a new order on the existing record or conduct any further proceedings the court deems necessary in the interests of justice.

Conclusion

¶ 13 We vacate the trial court's order and remand for further proceedings.

VACATED AND REMANDED.

Judges DILLON and HAMPSON concur.

Report per Rule 30(e).